

Department of Homeland Security

§ 245.3

to cases filed under section 1 of the Act of November 2, 1966.

(5) *Decision*—(i) *General*. The applicant shall be notified of the decision of the director and, if the application is denied, the reasons for the denial.

(ii) *Under section 245 of the Act*. If the application is approved, the applicant's permanent residence shall be recorded as of the date of the order approving the adjustment of status. An application for adjustment of status, as a preference alien, shall not be approved until an immigrant visa number has been allocated by the Department of State, except when the applicant has established eligibility for the benefits of Public Law 101-238. No appeal lies from the denial of an application by the director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 CFR part 240. Also, an applicant who is a parolee and meets the two conditions described in § 245.2(a)(1) may renew a denied application in proceedings under 8 CFR part 240 to determine admissibility. At the time of renewal of the application, an applicant does not need to meet the statutory requirement of section 245(c) of the Act, or § 245.1(g), if, in fact, those requirements were met at the time the renewed application was initially filed with the director. Nothing in this section shall entitle an alien to proceedings under section 240 of the Act who is not otherwise so entitled.

(iii) *Under the Act of November 2, 1966*. If the application is approved, the applicant's permanent residence shall be recorded in accordance with the provisions of section 1. No appeal lies from the denial of an application by the director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 CFR part 240. Also, an applicant who is a parolee and meets the two conditions described in § 245.2(a)(1) may renew a denied application in proceedings under 8 CFR part 240 to determine admissibility.

(b) *Application under section 2 of the Act of November 2, 1966*. An application by a native or citizen of Cuba or by his spouse or child residing in the United States with him, who was lawfully admitted to the United States for perma-

nent residence prior to November 2, 1966, and who desires such admission to be recorded as of an earlier date pursuant to section 2 of the Act of November 2, 1966, shall be made on Form I-485A. The application shall be accompanied by the Permanent Resident Card, Form I-151 or I-551, issued to the applicant in connection with his lawful admission for permanent residence, and shall be submitted to the director having jurisdiction over the applicant's place of residence in the United States. The decision on the application shall be made by the director. No appeal shall lie from his decision. If the application is approved, the applicant will be furnished with a replacement of his Form I-151 or I-551 bearing the new date as of which the lawful admission for permanent residence has been recorded.

(c) *Application under section 214(d) of the Act*. An application for permanent resident status pursuant to section 214(d) of the Act shall be filed on Form I-485 with the director having jurisdiction over the applicant's place of residence. A separate application shall be filed by each applicant. If the application is approved, the director shall record the lawful admission of the applicant as of the date of approval. The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor. No appeal shall lie from the denial of an application by the director but such denial shall be without prejudice to the alien's right to renew his or her application in proceedings under 8 CFR part 240.

[30 FR 14778, Nov. 30, 1965]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 245.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 245.3 Adjustment of status under section 13 of the Act of September 11, 1957, as amended.

Any application for benefits under section 13 of the Act of September 11, 1957, as amended, must be filed on Form I-485 with the director having jurisdiction over the applicant's place of residence. The benefits under section 13 are limited to aliens who were admitted into the United States under section 101, paragraphs (a)(15)(A)(i),

§ 245.4

(a)(15)(A)(ii), (a)(15)(G)(i), or (a)(15)(G)(ii) of the Immigration and Nationality Act who performed diplomatic or semi-diplomatic duties and to their immediate families, and who establish that there are compelling reasons why the applicant or the member of the applicant's immediate family is unable to return to the country represented by the government which accredited the applicant and that adjustment of the applicant's status to that of an alien lawfully admitted for permanent residence would be in the national interest. Aliens whose duties were of a custodial, clerical, or menial nature, and members of their immediate families, are not eligible for benefits under section 13. In view of the annual limitation of 50 on the number of aliens whose status may be adjusted under section 13, any alien who is prima facie eligible for adjustment of status to that of a lawful permanent resident under another provision of law shall be advised to apply for adjustment pursuant to such other provision of law. An applicant for the benefits of section 13 shall not be subject to the labor certification requirement of section 212(a)(14) of the Immigration and Nationality Act. The applicant shall be notified of the decision and, if the application is denied, of the reasons for the denial and of the right to appeal under the provisions of part 103 of this chapter. Any applications pending with the Service before December 29, 1981 must be resubmitted to comply with the requirements of this section.

(Secs. 103, 245, of the Immigration and Nationality Act, as amended; 71 Stat. 642, as amended, sec. 17, Pub. L. 97-116, 95 Stat. 1619 (8 U.S.C. 1103, 1255, 1255b))

[47 FR 44238, Oct. 7, 1982, as amended at 59 FR 33905, July 1, 1994]

§ 245.4 Documentary requirements.

The provisions of part 211 of this chapter relating to the documentary

8 CFR Ch. I (1-1-09 Edition)

requirements for immigrants shall not apply to an applicant under this part.

(Secs. 103, 214, 245 Immigration and Nationality Act, as amended; (8 U.S.C. 1103, 1184, 8 U.S.C. 1255, Sec. 2, 96 Stat. 1157, 8 U.S.C. 1255 note))

[30 FR 14779, Nov. 30, 1965. Redesignated at 48 FR 4770, Feb. 3, 1983, and further redesignated at 52 FR 6322, Mar. 3, 1982, and further redesignated at 56 FR 49481, Oct. 2, 1991]

§ 245.5 Medical examination.

Pursuant to section 232(b) of the Act, an applicant for adjustment of status shall be required to have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with section 212(a)(1)(A)(ii) of the Act, shall be incorporated into the record. A medical examination shall not be required of an applicant for adjustment of status who entered the United States as a nonimmigrant spouse, fiancéé, or fiancéeé of a United States citizen or the child of such an alien as defined in section 101(a)(15)(K) of the Act and § 214.2(k) of this chapter if the applicant was medically examined prior to, and as a condition of, the issuance of the nonimmigrant visa; provided that the medical examination must have occurred not more than 1 year prior the date of application for adjustment of status. Any applicant certified under paragraphs (1)(A)(ii) or (1)(A)(iii) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and part 235 of this chapter.

[56 FR 49841, Oct. 2, 1991, as amended at 62 FR 10384, Mar. 6, 1997; 66 FR 42595, Aug. 14, 2001]

§ 245.6 Interview.

Each applicant for adjustment of status under this part shall be interviewed by an immigration officer. This interview may be waived in the case of a child under the age of 14; when the applicant is clearly ineligible under section 245(c) of the Act or § 245.1 of this chapter; or when it is determined by the Service that an interview is unnecessary.

[57 FR 49375, Nov. 2, 1992]